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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,667	07/20/2006	Anne Ortiz-Julien	BJS-1721-122	8048
23117 7590 08/31/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
BADR, HAMID R				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
08/31/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/586,667

**Applicant(s)**

ORTIZ-JULIEN, ANNE

**Examiner**

HAMID R. BADR

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/US)
- Paper No(s)/Mail Date 7/20/2006
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Objection to Claims***

1. Claims 13-22 and 25-27 are objected to for "characterized in that". This phrase is not a common phrase in the U.S. practice. However, [wherein] or [comprising] may be used instead. Please see MPEP 2111.03. Correction is required.
2. Claims 25 and 27 are objected to for "ageing". The misspelling should be corrected.

### ***Use Claims***

1. Claim 27 provides for the use of glutathione, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 27 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15, 16, 17, 20, 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 15, 16, 17, 20 and 22 recite the broad recitations "at least 1%", "0.1-1.0 g/l", "at least 3 mg", "at least 3 mg", "at least 1%" respectively, and the claim also recites "at least 1.5%", "at least 0.5 g/l", "approximately 9 mg", "at least 1.5%", "approximately 9 mg" and "at least 1.5%" respectively which is the narrower statement of the range/limitation.

5. Claims 25 and 27 are indefinite for "preventing the aging of wine". Since the aging of wine is a desirable process in the art, it is unclear what is meant by preventing

the aging of wine. It is not clear why the applicants are trying to prevent the aging in wine which is known to be a desirable process in the art.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 13-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrarini (EP 1,236,795; hereinafter R1) in view of Salgues et al. (1986, Oxidation of grape juice 2-S-glutathionyl caffeoyl tartaric acid by Botrytis cinerea laccase and characterization of a new substance:2,5-di-S-glutathionyl caffeoyl tartaric acid).

8. R1 discloses an improved vinification process wherein a dose of oenological yeast in active paste form or other forms in a moist state is introduced into the wine. The treatment is provided during the refining of the wines for improvement of its organoleptic and compositional qualities. (Abstract). Given that various forms of yeast other than paste can be introduced into the wine, it is obvious that active dry yeast or inactive dry yeast, as presently claimed, can be added to the must.

9. R1 discloses that the yeast in lysis liberates enzymes which contribute to the improved evolution of the wines. R1 teaches that even dead yeast consumes dissociated oxygen and therefore, wines conserved in the presence of yeast are less subject to oxidation phenomena. R1 adds that the "secondary" actions are performed by yeasts both in the fermentation phase and in the post fermentation phase .[0011 and

0012]. Given that the secondary action of yeast can be performed in the fermentation phase, adding the glutathione containing yeast as a part of fermenting yeast, as presently claimed, would be obvious to an artisan.

10. R1 discloses that the secondary dose of yeast is 0.5-3 g/L which can be added to white wines and red wines. [0037]. The addition of the secondary dose of yeast may take place at any point in the maturation or refinement process of the wine [0034].

11. It is noted that yeast e.g. baker's yeast naturally contains 1-10% glutathione on a dry basis. Therefore, adding yeast containing e.g. 1% glutathione at 0.5 g/L will introduce about 5 mg glutathione per liter of must as presently claimed.

12. While R1 discloses the inclusion of oenological yeast for the purpose of improving the organoleptic properties of wines, R1 is silent regarding the role of glutathione as an anti-oxidative agent.

13. R2 discloses the role of glutathione in preventing the oxidation and browning in white grape juice. R2 discloses that in juice exposed to air, caftaric acid disappears and the so called "grape reaction product" (GRP) is formed. In the presence of polyphenol oxidase (PPO, in grapes), caftaric acid can undergo oxidation resulting in browning of juice. However, R2 concludes that addition of glutathione increases the concentration of GRP and since GRP is not a substrate for PPO, the juice resists browning. (Abstract, and page 1192 Results and Discussion: Browning and PPO oxidation)

14. The role of glutathione in prevention of browning in grape juice was then known in the art. On the other hand, techniques for producing glutathione enriched yeast were also known in the art, therefore, it would have been obvious to one of ordinary skill in

the art, at the time the invention was made to add glutathione enriched yeast to the must for a secondary function as taught by R1 and R2. One would do so to protect white wine from oxidative changes during aging. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in adding a glutathione enriched yeast to the must.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr  
Examiner  
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